

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11094 OF 2021
WITH CA/16804/2022 IN WP/11094/2021**

**VIJAY KASHINATH SHINDE AND OTHERS
VERSUS
THE COLLECTOR JALGAON AND OTHERS**

...

Mr. Milind K. Deshpande, Advocate for the Petitioners.
Mr. S. B. Yawalkar, AGP for Respondents-State.

...

**CORAM : NITIN W. SAMBRE AND
S. G. CHAPALGAONKAR, JJ.**

DATE : 19th APRIL, 2023.

FINAL ORDER (Per Nitin W. Sambre, J.) :-

1. The challenge in the petition is to the award dated 10th July, 2018 passed by respondent no.2 in respect of land bearing Gut No.19 situated at village Kathora, Tal. and Dist. Jalgaon. The petitioners have sought declaration that the acquisition proceeding has lapsed in view of the award being passed after expiry of one year as contemplated under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act of 2013').

2. The petitioners claim to be the owners of agricultural land bearing Gut No.19 admeasuring 69R. He would urge that the said land was subjected to the acquisition under the Land Acquisition Act, 1894 (for short 'Act of 1894').

3. It is the case of the petitioners that award came to be passed in the said proceedings on 27th February, 2012.

Subsequent thereto, the petitioners questioned the said award in Writ Petition No.9789/2010 which was allowed on December 12, 2012.

4. After the aforesaid acquisition proceedings under the Act of 1894 were quashed, a fresh proceedings were taken up under the Act of 2013 by issuing Notification under Section 11 of the Act of 2013 on May 2, 2016. The petitioners submitted their objections to the same on May 16, 2016 based on judgment of this Court in Writ Petition No.9789/2010.

5. On 30th December, 2016, the respondents declared their final intention to acquire the aforesaid land for the public purpose.

6. Subsequent thereto, an award came to be declared on July 10, 2018 and notice was issued to the petitioners on August 9, 2021 to accept the amount of compensation by remaining present before the competent authority on August 13, 2021.

7. The award dated 10th July, 2018 is questioned by the petitioners by inviting our attention to the date of issuance of the notification U/Sec. 17 of the Act of 2013. According to the learned counsel for petitioners, Section 11 of the Act of 2013 provides for publication of preliminary notification and the consequential powers of the officers thereupon.

8. He would urge that the notification under Section 11 was issued on 11th July, 2016. He would further urge that the notification under section 19 was published in the Government

Gazette from 09th March, 2017 to 15th March, 2017. As such he would urge that the provisions of Section 19 mandates that declaration under Sub Section 1 of Section 19 of the Act of 2013 should be made within a period of twelve months from the date of preliminary notification which in the case in hand from 09th March, 2017 to 15th March, 2017.

9. As such learned counsel for petitioners would urge that the award is required to be made by the Collector within a period of twelve months from the date of publication of declaration under Section 19 of the Act of 2013 and in case if the award is not made within a period of twelve months as provided under Section 25 of the Act of 2013, the entire proceedings for acquisition shall be lapsed. He would urge that a proviso is carved out to the aforesaid provision wherein powers are conferred to the appropriate Government to extend the period of twelve months referred to in Ist part of Section 25, if the appropriate Government is of the opinion about existence of circumstances justifying such extension. A further proviso is carved out that the decision to extend the period must be in writing and needs to be notified and uploaded on the website of the authority concerned. In this backdrop his contention that since there is no extension of the period of twelve months as provided under Section 19 of the Act of 2013 for the purpose of making an award, the proceedings are required to be declared as lapsed.

10. He would further urge that the Rules framed by the respondent-State Government in exercise of powers under Section 109 of the Act of 2013 on 19th March, 2014 particularly Rule 14 sub-Rule (2) is without any authority. So as to attack the claim of

the respondents that they have right to frame such Rules in law, he would rely on the provisions of Section 109 which according to him empowers the respondent-State Government to frame the Rules only in relation to the sub-Section (2) of Section 19 of the Act of 2013. A reliance is placed on the provisions of Clause (h) of sub-Section (2) of Section 109 which provides for framing of Rules as regards the manner of depositing the amount by the Acquiring Body under second proviso to sub-Section (2) of Section 19. According to the learned counsel for the petitioners, for the aforesaid reasons the award needs to be quashed and set aside, as the declaration under Section 19 has to be considered on 9th March, 2017 and not on 10th July, 2017 as has been claimed by the respondent-State Government.

11. While countering the aforesaid submissions, the learned A.G.P. would invite attention of this Court to the language employed in Section 109 of the Act of 2013. According to the learned A.G.P. sub-Section (2) of Section 109 is specifically empowering the State Government to frame Rules in relation to the subjects prescribed therein, however in generality, sub-Section (1) of Section 109 confers power in the State Government to carry out the provisions of the Act. As such, according to him Rules referred to above cannot be said to be without any authority of law. He would also urge that Rule 14 sub-Rule (2) mandates that the Notification issued under Section 19 should be published in the office of the Village Revenue Officer and accordingly, the said Notification was published in the office of the Village Revenue Officer on 10th July 2017. As such, he would urge that since the award passed which is subject matter of challenge is within the period of one year from the said date i.e. 10th July,

2017, the provisions of Section 25 of the Act of 2013 will not be attracted, so as to form an opinion that the award has lapsed for not being notified within a period of one year from the date of Section 19 Notification. As such, he has sought dismissal of the petition.

12. We have appreciated rival submissions.

13. The declaration as contemplated under Sub Section 1 of Section 19 of the Act of 2013 in the case in hand is made in between 09th March, 2017 to 15th March, 2017. The final ward is declared on 10th July, 2018. As such the petitioners are seeking shelter of provisions of Section 25 read with Section 19 of the Act of 2013 for declaration that the award in the case in hand is passed.

14. If we appreciate aforesaid contentions, we need to be sensitive to the rules framed under the provision of Section 19 of the Act of 2013. Rule 13 and 14 provides for publication of draft rehabilitation and resettlement scheme and publication of declaration by Collector respectively. Sub Rule 1 of Rule 14 mandates that Collector shall issue a declaration under Sub Section 1 of Section 19 of the Act along with summary of rehabilitation and resettlement scheme. As such declaration under Rule 14(1) can be made only if acquiring body has deposited entire amount towards cost of the acquisition of the land.

15. The declaration under Sub Section 1 of Section 14 is required to be published in the affected areas by way of affixing written copy on the board of village panchayat office and the office

of village revenue officer and urban local bodies. The Sub Rule 3 of Rule 14 further provides that date of such last publication under Sub Rule 2 of Rule 14 shall be date of publication of declaration under Sub Section 1 of Section 19 of the Act of 2013.

16. The aforesaid provision appears to be in tune with the provisions of Section 19 Sub Sections 4, 5, 6 and 7, which reads thus :

“(4) Every declaration referred to in sub-section (1) shall be published in the following manner, namely:—

(a) in the Official Gazette;

(b) in two daily newspapers being circulated in the locality, of such area of which one shall be in the regional language;

(c) in the local language in the Panchayat, Municipality or Municipal Corporation, as the case may be, and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil;

(d) uploaded on the website of the appropriate Government;

(e) in the affected areas, in such manner as may be prescribed.

(5) Every declaration referred to in sub-section (1) shall indicate-

(a) the district or other territorial division in which the land is situated;

(b) the purpose for which it is needed, its approximate area; and

(c) where a plan shall have been made for the land, the place at which such plan may be inspected without any cost.

(6) The declaration referred to in sub-section (1) shall be conclusive evidence that the land is required for a public purpose and, after making such declaration, the appropriate Government may acquire the land in such manner as specified under this Act.

(7) Where no declaration is made under sub-section (1) within twelve months from the date of preliminary notification, then such

notification shall be deemed to have been rescinded:

Provided that in computing the period referred to in this subsection, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded:

Provided further that the appropriate Government shall have the power to extend the period of twelve months, if in its opinion circumstances exist justifying the same:

Provided also that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.”

17. A perusal of the Sub Rule 2 of Rule 14, wherein , “word and” is used in between the declaration to be made on the board of village panchayat office and the office of the village revenue officer and urban local bodies postulates conjunctive reading of the provisions particularly having regard to the wording of Sub Rule 3 of Rule 14.

18. Admittedly in the case in hand publication in the office of village revenue officer is on 10th July, 2017 on the notice board of the office of Talathi. Whereas, the award under challenge came to be passed on 10th July, 2018. As such it is to be inferred that the award was passed within a period of one year from the date of Notification.

19. It is required to be noted that the day on which the notice was published i.e. on 10th July, 2017 has to be ignored in view of the provisions of General Clauses Act. Mr. Yawalkar, learned A.G.P. in our opinion is justified in relying on the judgments of the Apex Court in the matters of **Rameshchandra Ambalal**

Joshi Vs. State of Gujarat and Another, reported in **2014 AIR (SC) 1554** and ***Tarun Prasad Chatterjee Vs. Dinanath Sharma***, reported in **2001 AIR (SC) 36**. So as to substantiate the contention of Mr. Yawalkar that day one of the notice is required to be ignored, reliance is placed on the observations made in paragraph 11 of the judgment in the matter of ***Rameshchandra Ambalal Joshi*** (supra) which reads thus:

“This decision was quoted with approval in Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1 in the following words:

“7. The aforesaid principle of excluding the day from which the period is to be reckoned is incorporated in Section 12(1) and (2) of the Limitation Act, 1963. Section 12(1) specifically provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. Similar provision is made in sub-section (2) for appeal, revision or review. The same principle is also incorporated in Section 9 of the General Clauses Act, 1897 which, inter alia, provides that in any Central Act made after the commencement of the General Clauses Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to.”

So also in Paragraph No.12 of the judgment in the matter of ***Tarun Prasad Chatterjee*** (supra) it has been held as under:

“Section 9 says that in any Central Act or Regulation made after the commencement of the General Clauses Act, 1897, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word “from”, and, for the purpose of including the last in a series of days or any period of time, to use the word “to”. The principle is that when a period is delimited by statute or rule, which has both a beginning and an end and the word “from” is used indicating the beginning, the opening day is to be

excluded and if the last day is to be excluded the word "to" is to be used. In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation is delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties. For instance, if a policy of insurance has to be good for one day from the 1st January, it might be valid only for a few hours after its execution and the party or the beneficiary in the insurance policy would not get reasonable time to lay claim, unless the 1st January is excluded from the period of computation."

20. In view of the aforesaid position of law this Court is under obligation to ignore the first day pursuant to the provisions of Section 9 of the General Clauses Act. That being so, it is to be held that the award passed by the respondents was within a period of two years from the date of publication of the notice in the office of the Village Revenue Officer.

21. In this background, we do not see any reason to cause interference on the aforesaid issue.

22. Apart from the above, the fact remains that plain reading of Section 109 provides for the powers of appropriate Government to make Rules. Sub-Section (1) of Section 109 empowers the appropriate Government by Notification to make Rules for carrying out the provisions of the Act. Sub-Section (2) of Section 109 prescribed the Rules to be framed under the subject mentioned therein and without prejudice to the generality of the foregoing i.e. sub-Section (1) of Section 109. As such, the State Government in our opinion pursuant to the provisions of sub-Section (1) of Section 109 was justified in framing the Rules dealing with the publication of the notice.

23. That being so, there is no substance in the petition. The petition as such fails and stands dismissed.

24. In view of dismissal of the Writ Petition, the present Civil Application stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(NITIN W. SAMBRE)
JUDGE

Devendra/April-2023